

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SOUTHEAST FLOATING DOCK)
ESTATE FUND,)
Plaintiff,)
)
v.)
)
AGM MARINE CONTRACTORS, INC.,)
ET AL.)
)
Defendants.)
)

CIVIL ACTION NO.:
05-11039-EFH

ORDER

April 24, 2008

HARRINGTON, S.D.J.

The plaintiff's motion (Docket 74) is allowed. The documents submitted for *in camera* review shall be maintained, and the documents ordered for disclosure shall be made part of the record. These latter documents are attached to this order.

SO ORDERED.

/s/ Edward F. Harrington
EDWARD F. HARRINGTON
United States Senior District Judge

Richard T. Holland

From: David F. Guertin [dpwdirector@provincetown-ma.gov]
Sent: Monday, March 08, 2004 12:26 PM
To: Keith A. Bergman
Cc: Richard T. Holland; Sandra Turner
Subject: CONFIDENTIAL; MacMillan Pier

Last Thursday, as arranged, a Rasko Ojdrovic, Ph.D., PE, of Simpson Gumpertz & Heger toured the pier & was given pertinent data to start their analysis. Mr. Ojdrovic would be meeting w/ Mr. Dusenberry (his boss and our original contact) today for their first briefing. Of particular and immediate importance, it was requested their services be extended to include what dock components are capable of going back in the water to provide for the needed berthing. He was informed of our timetable and was told to anticipate being on-site for what may be a three (3) day period to lend this assistance during re-installation. This morning I met with Winkler and Highway Foreman Ray Duarte to discuss a plan of action for the intended re-installation of capable components. This would obviously be a modification to the existing Winkler proposal and Ray Duarte's participation is as a needed manpower resource, but, more importantly, there was general agreement as to the sequence of events which includes work that can be performed on the pieces while they are on the pier. Once we know Dr. Ojdrovic's schedule, we proceed from there. DFG

Richard T. Holland

From: David F. Guertin [dpwdirector@provincetown-ma.gov]
Sent: Monday, April 12, 2004 2:22 PM
To: Rick Holland
Cc: Keith A. Bergman
Subject: Confidential; MacMillan Pier/AGM Marine

I have a voice mail from John M of AGM stating that the float manufacturer wants to arrive next tues or thurs (April 22 or 26th) to view the floats and to converse. To me, this is John's call or more correctly, this is a decision you can discuss with his attorney. Also, they are on-site working.

Please advise. DFG

Richard T. Holland

From: David F. Guertin [mailto:dpwdirector@provincetown-ma.gov]
Sent: Monday, April 12, 2004 3:11 PM
To: Richard T. Holland
Cc: Keith A. Bergman
Subject: RE: Confidential; MacMillan Pier/AGM Marine

Then the 22nd of April it is. I will call John. You call Rasko. DFG

-----Original Message-----

From: Richard T. Holland [mailto:RHolland@k-plaw.com]
Sent: Monday, April 12, 2004 2:42 PM
To: dpwdirector@provincetown-ma.gov
Cc: Keith A. Bergman
Subject: RE: Confidential; MacMillan Pier/AGM Marine

David,

The manufacturer can be in Provincetown for a meeting on April 20 (Tuesday) or 22 (Thursday) regarding a discussion about the failure of the system. I cannot do the 20th, so please let me know if the 22nd is ok with your schedule. We will also need to notify Rasko, which I will do upon word from you that the 22nd is fine.

Please let me know at your earliest convenience and I will notify counsel for AGM, counsel for the manufacturer and Rasko.

Thank you.

Rick.

Richard T. Holland
Kopelman & Paige, P.C.
31 St. James Avenue
Boston, MA 02116
(617) 556-0007
(617) 654-1735 (fax)
rholand@k-plaw.com

-----Original Message-----

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Sent: Monday, April 12, 2004 2:22 PM
To: Richard T. Holland
Cc: Keith A. Bergman
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Please advise. DFG

Richard T. Holland

From: Keith Bergman [townmanager@provincetown-ma.gov]
Sent: Friday, September 03, 2004 10:28 AM
To: David F. Guertin
Cc: Richard Holland; Michelle Jarusiewicz
Subject: MacMillan Pier repairs

Importance: High
Sensitivity: Confidential

Initial feedback from a couple of Selectmen this morning is that wave attenuator need not be off the table. The timetable for Chapter 91 licensing should be outlined for that option, however.

There was a question about what the useful life was of the floating dock system that we installed, so that we can compare that to the useful life of whatever options AGM may come forward with.

We can discuss options with the Selectmen in executive session on September 13th.

Thanks very much.

kb

Richard T. Holland

From: David F. Guertin [dpwdirector@provincetown-ma.gov]
Sent: Friday, September 03, 2004 11:25 AM
To: townmanager@provincetown-ma.gov
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier repairs

Sensitivity: Confidential

Attachments: AGMsept04.doc



AGMsept04.doc

It just happens that I was working on a report that was to shape the process for bringing forward "what we need". Even called Mitch @ DEP Waterways to confirm rebuilding as-is is just a maintenance permit whereas anything outside the configuration zone and the attenuator would trigger this, is a new permit to include the needed public process thus taking a year or so with the needed environmental analysis. Not sure I should continue or simply modify the approach. I think a simple matrix leaving the dollars off for now could help. Would like to publish next couple of days if possible. Attached report is "work in progress". Was also going to recommend keeping Rasko in place for the engineering oversight we would need. Your thoughts??? DFG

-----Original Message-----

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Friday, September 03, 2004 10:28 AM
To: David F. Guertin
Cc: Richard Holland; Michelle Jarusiewicz
Subject: MacMillan Pier repairs
Importance: High
Sensitivity: Confidential

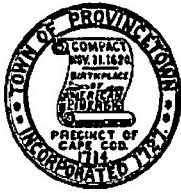
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 Thanks very much.

kb

Tracking:	Recipient	Read
	townmanager@provincetown-ma.gov	Read: 9/3/2004 11:29 AM
	Richard Holland	
	Michelle Jarusiewicz	Read: 9/3/2004 11:38 AM



Provincetown DPW

Memo

CONFIDENTIAL

To: Building Committee Chair Ginny Binder, Pier Corp Chair Paul D...???

From: David F. Guertin, DPW Director

Cc. Keith Bergman, Town Manager, Rick Holland, Kopelman & Paige

Date: September 3, 2004

Re: MacMillan Pier; *A possible mechanism to reach agreement w/ AGM*

Please consider this a primer for a level of effort you may be asked to undertake and the Dept's first opportunity to share information regarding pending litigation w/ AGM; litigation that follows a strategy we would characterize as being "extremely aggressive".

On August 27, 2004, the Town met w/ AGM at the request of their surety, Zurich North America. [see report of meeting dated Aug 27th]

As a follow-up, the Town Manager & I met again w/ AGM yesterday at their request. AGM, represented by owner John Mikutowicz and Project Manager Bill Lovely and without council, stated clearly to us;

- They do want want to spend money litigating
- That money is better directed towards a float system that AGM can provide
- If agreements can be reached by late this year, float system can be in service for spring 05

To which, AGM further stated;

- A massive floating attenuator would be needed if the system were restored in-kind
- We would need to weigh in on type of floats, be it wood or concrete & wood combination [main floats and finger floats respectively]

Richard T. Holland

From: Keith Bergman [townmanager@provincetown-ma.gov]
Sent: Wednesday, September 08, 2004 3:28 PM
To: David F. Guertin
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier repairs

Sensitivity: Confidential

David-

Just to confirm that the Board of Selectmen will have an executive session discussion on Monday night, September 13th, regarding MacMillan Pier repairs. For back-up for the Selectmen's agenda packets, it would be helpful to have AGM Marine's proposed menu of options, and any comments you have thereon.

Thanks very much.
kb

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Sent: Friday, September 03, 2004 10:28 AM
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Cc: Richard Holland; Michelle Jarusiewicz
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We can discuss options with the Selectmen in executive session on September 13th.

Thanks very much.
kb

Richard T. Holland

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Wednesday, September 22, 2004 5:41 PM
To: David F. Guertin
Cc: Richard T. Holland
Subject: RE: MacMillan Pier repairs - AGM

Importance: High
Sensitivity: Confidential

Just a reminder that the Board of Selectmen is looking to get a proposed process outline to vote on this Monday night relative to MacMillan Pier repairs and AGM Marine. They would discuss this in executive session.
Thanks very much.
kb

-----Original Message-----

From: Richard T. Holland [mailto:RHolland@k-plaw.com]
Sent: Wednesday, September 08, 2004 4:05 PM
To: townmanager@provincetown-ma.gov; David F. Guertin
Subject: RE: MacMillan Pier repairs
Sensitivity: Confidential

Please let me know if you need me to attend the BOS meeting on Monday, and whether you wish to discuss alternate systems with SGH/Rasko prior to the meeting.

Rick

Richard T. Holland
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116
(617) 556-0007
(617) 654-1735 (fax)
rholand@k-plaw.com

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Sent: Wednesday, September 08, 2004 3:28 PM
To: David F. Guertin
Cc: Richard T. Holland; Michelle Jarusiewicz
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Importance: High

Sensitivity: Confidential

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We can discuss options with the Selectmen in executive session on September 13th.

Thanks very much.

kb

Richard T. Holland

From: Regina Binder [reginabinder@attglobal.net]
Sent: Monday, November 15, 2004 10:50 AM
To: townmanager@provincetown-ma.gov; David F. Guertin; Rex McKinsey; Paul de Ruyter
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier - Floating Dock System

Hi Keith,

I have no update on the floating docks. My hope was that we could get together with the Chapter 91 people and convince them that the addition of a wave attenuator is a minor modification to the license and in fact a necessity to public safety and maximum public benefit. That would help us with the best design.

Cheers,
Ginny

-----Original Message-----

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Monday, November 15, 2004 10:20 AM
To: David F. Guertin; Rex McKinsey; Regina Binder; Paul de Ruyter
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier - Floating Dock System
Importance: High

Just checking in on the status of recommendations for preferred solutions for MacMillan Pier floating dock system.

It was my understanding that, in order for any improvements to be ready for the Spring, a decision would need to be made by December at the latest.

The Board of Selectmen had indicated its desire to hold a public hearing on this, so any update/prognosis would be appreciated.

Thanks very much.
kb

-----Original Message-----

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Tuesday, September 28, 2004 10:51 AM
To: David F. Guertin; Rex McKinsey; Regina Binder; Paul de Ruyter
Cc: Richard Holland
Subject: MacMillan Pier - Floating Dock System

Please know that, at its meeting last night, the Board of Selectmen voted to refer to the Building Committee and the PPPC the formulation of recommendations for preferred solutions for MacMillan Pier floating dock system damaged by the December 6-7, 2003 storm event, and for the BOS to hold a public hearing thereon.

Please let me know what questions you have about this.
Thanks very much.
kb

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Please let me know what questions you have about this.
Thanks very much.
kb

Richard T. Holland

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Tuesday, November 16, 2004 3:38 PM
To: Rex McKinsey
Cc: Richard Holland; Michelle Jarusiewicz; David F. Guertin; Regina Binder; Paul de Ruyter
Subject: RE: MacMillan Pier - Floating Dock System

Sounds great.
Thanks very much.
kb

-----Original Message-----

From: Rex McKinsey [mailto:piermanager@provincetowngov.org]
Sent: Tuesday, November 16, 2004 3:20 PM
To: townmanager@provincetown-ma.gov; David F. Guertin; Regina Binder; Paul de Ruyter
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier - Floating Dock System

Keith, I have been directed to prepare a draft letter for the Pier Corp meeting on Thursday outlining the results of our work regarding the dock system. I suspect that a final version will be forwarded to Town Hall on Friday. It is important to note that the ideas are a result of our work with the floating dock tenants and DPW staff. Thanks, Rex.

-----Original Message-----

From: Keith Bergman [mailto:townmanager@provincetown-ma.gov]
Sent: Monday, November 15, 2004 10:20 AM
To: David F. Guertin; Rex McKinsey; Regina Binder; Paul de Ruyter
Cc: Richard Holland; Michelle Jarusiewicz
Subject: RE: MacMillan Pier - Floating Dock System
Importance: High

Just checking in on the status of recommendations for preferred solutions for MacMillan Pier floating dock system.
It was my understanding that, in order for any improvements to be ready for the Spring, a decision would need to be made by December at the latest.
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Thanks very much.
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Please let me know what questions you have about this.
Thanks very much.
kb

Incoming mail is certified Virus Free.

Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.789 / Virus Database: 534 - Release Date: 11/7/2004

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.789 / Virus Database: 534 - Release Date: 11/7/2004

Richard T. Holland

From: Keith Bergman [townmanager@provincetown-ma.gov]
Sent: Friday, December 10, 2004 2:50 PM
To: DAVID DONESKI; Richard T. Holland
Cc: JOHN GIORGIO
Subject: FW: Floating dock recommend joint memo

Importance: High

Attachments: 041205 Flot Doks ltr to BoSv3.doc



041205 Flot Doks ltr
to BoSv3.... FYI from Pier Corporation re: floating docks.
kb

-----Original Message-----

From: Rex McKinsey [mailto:piermanager@provincetowngov.org]
Sent: Friday, December 10, 2004 2:32 PM
To: Keith Bergman
Cc: Regina Binder; JIMPtown@aol.com; David Guertin; John Baldwin; Chip Bradish; George Hitchcock; Lee Ash; Paul de Ruyter
Subject: Floating dock recommend joint memo

Keith, attached is the final for Monday's BoS meeting on the remedial efforts for the floating docks. As discussed, both boards support your efforts with AGM and look forward to working with you and the BoS to solve the facilities protection issues. Please feel free to call with questions, Rex.

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.807 / Virus Database: 549 - Release Date: 12/7/2004

**Provincetown Building Committee
and Public Pier Corporation**

Joint Memo

To: Provincetown Board of Selectmen
Keith Bergman, Town Manager

From: Building Committee and Pier Corp.

CC: David Guertin, Director, Department of Public Works
Pro-Fish

Date: 11/12/2007

Re: Floating Docks re-design

Last Thursday December 2nd and again on the 7th, the Building Committee met with John Mikutowicz of AGM, interested pier tenants and David Guertin to review a re-design memo from the Pier Corp. This memo addressed redesigning the floating docks to include additional piles for stern-to tie-ups; removable wood finger floats for the North dock and ideas for wave attenuation in a two-phase program. The various aspects were discussed at length.

Mr. Mikutowicz stated that phase one of the plans would not survive without wave attenuation and that concrete floats, as wave attenuators, would not suffice. He suggested that a steel spud barge or several smaller barge platforms moored just off the facility would afford better protection. (Spud refers to internal adjustable piles on a barge used as 'feet' to moor a work platform in place.).

Mr. de Ruyter, chair of the Pier Corp, suggested remedial tests of small barges to determine efficacy and noted that a sense of urgency to return the facility to full capacity in pursuit of increased revenue should be balanced against racing to erroneous conclusions that could cost the Town more in the long term. The Pier Manager stated the additional revenue of the floating docks at full capacity is about \$25,000 annually.

Mr. Guertin stated that calculations would be done to ascertain the useful life of the floats as repaired. The damaged main dock sections were reinforced with steel straps prior to re-installation.

The floating dock tenants originally proposed the med-moor tie up concept, but expressed concern that the boats would be broadside to the wind in phase one without protection and alongside berthing as currently done would be very difficult with added piles.

In light of the tenant's comments on the two-phase approach and carefully considering the opinions expressed by John Mikutowicz of AGM, the Building Committee and Pier Corp. are recommending remedial testing of the concepts embodied in the two-phase memo. Sorted below in order of importance:

- Pursue Phase One: removable wood finger floats on both docks; the "T" end of south dock should incorporate a wave-attenuating design into a wood float and additional pile support in the middle. To be available next spring, the design should allow for removal and service by existing staff and storage on pier with existing cranes.
- Prepare for remedial testing of protection concepts for the floating dock facility from the northeast by next fall. If barges become the first test, acquire through lease or purchase appropriate barges needed for testing. Provide for the mooring of these vessels just off the facility. Current discussions revolve around 10 by 40-foot units with a freeboard of 1-2 feet, not much larger than the existing main float sections.
- Pursue ideas and testing to offer protection of the facility from the southwest. Do not pursue the vertical timber design concept along the east side of the approach pier.
- Replace the damaged ends of both docks to their original length. Secure with steel piles at the ends.
- Correct the balance of the north floating dock and provide wood fingers designed for off-season removal. If the barge concept proves adequate for a harbor of refuge, some of the original fingers could be re-set in the future.

We recognize that this program may well need concurrence from DEP and suggest that the Building Committee and Pier Corp form a sub-committee to meet with appropriate representatives of DEP to discuss the strategy outlined above. We believe that moored vessels and/or temporary remedial tests may fall outside of the scope of DEP permitting or qualify as emergency measures.

The underlying principal guiding us requires that we face up to our duties with respect to proper management of MacMillan Pier as well as our responsibilities to the Town. Without addressing wave attenuation we feel we will not have fulfilled these responsibilities.

The benefits to Provincetown's fishing community and our communities' economic well being in general, are severely threatened without addressing wave attenuation. Millions of dollars were spent on the design and construction for a working pier, and one storm proved that eliminating one element....*the key element*....jeopardizes the financial future and efficient operations of this project as well as our hard-working citizens whose lives depend on a well-built and well-protected pier.

In closing, we support immediate implementation of phase one as amended for spring installation and strongly urge coordinated efforts to develop a protection package for the facility with concept testing to begin next fall. We recognize the concerns of waterfront property owners and will work with all affected parties and regulatory agencies to achieve effective protection of the Town's investment before sustaining further damage next winter.

260 Commercial Street
Provincetown, MA 02657
Phone: 508-487-7000
FAX: 508-487-9560

**Town of
Provincetown**

Fax

To: John W. Giorgio

From: Keith A. Bergman

Kopelman and Paige, P.C.

Fax:

Pages: 7 (including cover sheet)

Phone:

Date: February 3, 2004

Re: Floating Dock Costs

CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

Comments:



RECEIVED

FEB 3 2004

TOWN MGR OFFICE

**Town of Provincetown
Dept of Public Works**

Sandra M. Turner, Deputy DPW Director
Ph# 508-487-7060/7067 Fax# 508-487-4675
E-Mail: dpwoperations@provincetowngov.org

To: Keith A. Bergman, Town Manager *SMT*
From: Sandra M. Turner, DPW Deputy Director
Cc: David F. Guertin, DPW Director; Wayne Perry, EPG
Date: January 30, 2004
Re: Floating Dock Costs

Attached is a letter from AGM explaining we owe them approximately \$115,000 to date for the retrieval of the floating docks after the storm. They have also provided us with a cost estimate for moving the floating docks from the pier to either the MPI. Lot or someplace less obtrusive at a cost of \$55,200 (on one of the effluent bcd like Site I). AGM has also provided us with the number of floating docks, weights and dimensions so we can have the engineers make sure these would be safe stored on an effluent bcd.

Confidential / High
Copies to BOSS
AATM
DOME
Tom Conner
JWG
2/3/04



MARINE CONTRACTORS, INC.
30 Echo Rd., West Falmouth, MA 02543
(508) 477-8801 FAX: (508) 477-8804

January 29, 2004

Sandra Turner
Town of Provincetown
Public Works Department
260 Commercial St.
Provincetown, MA 02657

Ref.: MacMillan Pier Reconstruction

Subject: Concrete Float Salvage

Dear Sandy:

As requested by you, we have prepared pricing to remove the floating docks from their current location on the pier and transport them to either the MPL or a site off Route 6. We have estimated that this work will take one week to complete with two crews working full time, one loading and one unloading and blocking and stacking. The total cost to move the floats is \$55,200. We are available to perform this work with one weeks notice.

Attached is a copy of the float plan showing which floats remain in the water, which ones are on the pier and a tally of the estimated weight of the units.

We have also calculated the estimated cost to date for retrieving the damaged floats. The total estimated cost for that work is \$115,000. We are waiting for a final invoice from the crane company to finalize this cost.

If you would like a price to repair and reinstall the floats for this Spring we would have to meet on site to determine the floats that could be salvaged, how they would be arranged in the water and what materials would be required to temporarily make them suitable for use this upcoming season. I am available at your convenience to meet and discuss this issue.

If you have any questions regarding this matter please do not hesitate to contact me.

Respectfully submitted,

AGM Marine Contractors, Inc.


John Mikutowicz

JM/sg

Encl.

FEB-03-2004 TUE 04:03 PM TOWN OF PROVINCETOWN

FAX NO. 5084879560

P. 05

FLOATS ON PIER

A - DOCK	ENTIRE SYSTEM ON PIER			EST PC
FINGER PIERS	40' LONG X 6' WIDE			WEIGHT
3 PC	INTACT W/ MINOR DAMAGE			36,000
4 PC	BROKEN W/PARTS MISSING			48,000
MAIN DOCK			264.5' LONG X 8.42' WIDE, IN 7 SEVEN SEPARATE PIECES	
1 PC	60' X 8.42 APPROX	IN FIVE SECTIONS		60,000
6 PC	34' X 8.42 APPROX	IN THREE SECTIONS		36,000
 B - DOCK				
PART OF SYTSEM IN WATER PART ON PIER				
 SECTIONS IN WATER				
9 PC	MAIN DOCK			
	101' X 8.42' APPROX			
 FINGERS				
3 PC	INTACT IN WATER			48,000
1 PC	49' X 8.42' APPROX	IN FOUR SECTIONS		48,000
2 PC	39.75' X 6' APPROX	IN FOUR SECTIONS EACH		
 SECTIONS ON PIER				
3 PC	MAIN DOCK			
	174' X 8.42' APPROX			
1 PC	51' X 8.42' APPROX	IN FIVE SECTIONS		60,000
2 PC	61' X 8.42' APPROX	IN FIVE SECTIONS		60,000
 FINGERS				
3 PC	INTACT WITH MINOR DAMAGE	39.75' X 6'	APPROX	48,000
9 PC	BROKEN W/PART MISSING	39.75' X 6'	APPROX	48,000

JAN 29 '04 11:20AM

NOTE: FILED ON 2/2/04

P.5/6

"A" DOCUMENT

LOCK ON PLATE

ENTIRE

MINOR DAMAGE

MINOR

MINOR

BROKEN

BROKEN

PL

PL

PL

PL

PL

